second trimester abortions to be performed in a hospital; requiring a woman's physician to inform her of the availability of adoption services before allowing her to consent to an abortion; requiring a woman to wait twenty four hours after signing a consent form before she could obtain an abortion; requiring parental consent before an unmarried woman under the age of eighteen could obtain an abortion; and prohibiting advertisements for abortions.23

At the same time, though, the Court in this era did uphold some regulations of abortion. For example, the Court sustained the constitutionality of requirements that records be kept about the performance of abortions, that tissue samples of aborted fetuses be submitted to certified pathologists, and that a minor who sought to have an abortion must first obtain either parental consent or judicial approval. In the Court's view, these were reasonable regulations that did not significantly interfere with the fundamental right recognized in Roe. 24

More controversially, the Court in these years also upheld the constitutionality of laws prohibiting the use of public Medicaid funds to enable indigent women to pay for legal abortions. In 1977, for example, in a six to three decision in Maher v. Roe, 25 the Court rejected a constitutional challenge to a Connecticut statute which, like the laws in thirty three other states, prohibited the use of state Medicaid funds to pay for indigent women's abortions unless the abortion was necessary to protect the life or health of the woman. In an opinion by Justice Lewis Powell, who had joined the decision in Roe, the Court explained that although the government cannot constitutionally prohibit abortion, nothing in the Constitution requires the government to pay for the medical expenses of indigents, whether for abortion, foot surgery, prescription drugs, or any other medical matter. To the contrary, Powell reasoned, just as the government has no constitutional obligation to buy poor people megaphones so they can exercise the freedom of speech, and just as it has no constitutional obligation to buy poor people guns so they can exercise their rights under the Second Amendment so it is under no constitutional obligation to pay for poor women's abortions

The dissenting Justices Brennan, Marshall, and Blackmun objected that the issue in Maher was not that simple. They argued that because the state allowed Medicaid funds to be used to pay for the cost of childbirth but not for the cost of abortion, the Medicaid program unconstitutionally pressured pregnant women to choose childbirth over abortion.26 The Court rejected this argument, declaring that nothing in Roe prohibited the government from making "a value judgment favoring childbirth over abortion.” 21

Two years later in *Barns vs. Jones* the Court went even further and

upheld the constitutionality of the so called Hyde Amendment. Enacted in 1976, the Hyde Amendment was named after its chief sponsor, Republican Congressman Henry Hyde of Illinois. A vehement critic of Roe, Hyde proclaimed that "when a pregnant woman, who should be the natural protector of her unborn child, becomes its deadly adversary, then it is the duty of this legislature to intervene on behalf of defenseless human life." Unlike the Connecticut statute at issue in Maher, the Hyde Amendment expressly prohibited the use of federal Medicaid funds to pay for an indigent woman's abortion even if the abortion was medically necessary to protect the health of the woman. *29

In a sharply divided five to four decision, the Court held that even when a woman's health is at risk, her "freedom of choice" does not carry with it a "constitutional entitlement" to government funds to enable her to exercise her right to abortion. The Court explained that the Hyde Amendment was constitutional because it furthered "the legitimate governmental objective of protecting potential life."30

In a furious dissenting opinion, Justice Thurgood Marshall, a liberal lion and the greatest civil rights advocate of the twentieth century, offered an impassioned critique of the Court's reasoning. The majority, Marshall argued, coldly ignored the fact that women too poor to pay for medically necessary abortions would now be left with no choice but to "resort to back alley butchers, attempt to induce an abortion themselves by crude and dangerous methods, or suffer the serious medical consequences of attempting to carry the fetus to term." The Court's decision, Marshall fumed, "represents a cruel blow to the most powerless members of our society." 31

Despite these decisions on funding, which dealt with the admittedly complex issue of government subsidies for the exercise of constitutional rights, the core protections guaranteed by Roe remained largely intact. The makeup of the Court, however, was about to change.

* The Hyde Amendment permitted Medicaid funds to be used only if the woman's life was at stake or if she had been the victim of rape or incest. In subsequent decisions, the Court extended the principle of Maher and Harris, holding that government can constitutionally prohibit public hospitals from performing abortions and can even constitutionally prohibit doctors who receive public funds to support family planni.ng programs to inform their patients about the availability of abortion. See Webster v. Reproductive Health Services. S. 490(l9B9);